

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

WAVE NEUROSCIENCE, INC. a Delaware Corporation,

Plaintiff,

vs.

BRAIN FREQUENCY LLC, a Texas Limited Liability Company

Defendant.

Case No. 5:23-CV-00626-XR

Honorable: Xavier Rodriguez

**DECLARATION OF J. RICK TACHÉ IN SUPPORT OF PLAINTIFF'S RESPONSIVE
CLAIM CONSTRUCTION BRIEF**

I, J. Rick Taché, declare as follows:

1. I am an attorney duly approved to practice law in the State of California and, for purposes of this case, admitted *pro hac vice* to practice law in the State of Texas. I am a shareholder at the law firm of Buchalter, counsel for Plaintiff Wave Neuroscience, Inc. in this action. The facts stated herein are within my personal knowledge and if called upon to testify I can truthfully and competently do so as to all matters herein. This declaration is submitted in support of Plaintiff's Responsive Claim Construction Brief.

2. The following is a true and correct portion of Trac9.com's website, from <https://trac9.com/> (last visited May 30, 2024), showing it "work[s] with" Windmill Wellness:

Who We Work With



3. The “Windmill Wellness” emblem in the above excerpt is hyperlinked, and when clicked, it takes you to the website for Windmill Wellness Ranch website at <https://windmillwellnessranch.com/> (last visited May 30, 2024).

4. Below is a true and correct copy of an excerpt of the Texas Franchise Tax Public Information Report for Windmill Wellness Ranch LLC for the reporting year 2022, dated May 12, 2022 identifying the President and a Director as Shannon Malish and a Director as Julia Cline-Sellers:

Texas Franchise Tax Public Information Report																								
 05-102 (Rev. 9-11/30)		To be filed by Corporations, Limited Liability Companies (LLC) and Financial Institutions This report MUST be signed and filed to satisfy franchise tax requirements																						
T Code 13196 Franchise																								
<input type="checkbox"/> Taxpayer number <table border="1" style="display: inline-table; vertical-align: middle;"> <tr><td>3</td><td>2</td><td>0</td><td>6</td><td>2</td><td>5</td><td>6</td><td>2</td><td>2</td><td>9</td><td>6</td></tr> </table>					3	2	0	6	2	5	6	2	2	9	6	<input type="checkbox"/> Report year <table border="1" style="display: inline-table; vertical-align: middle;"> <tr><td>2</td><td>0</td><td>2</td><td>2</td></tr> </table>					2	0	2	2
3	2	0	6	2	5	6	2	2	9	6														
2	0	2	2																					
<i>You have certain rights under Chapter 552 and 559, Government Code, to review, request, and correct information we have on file about you. Contact us at (800) 252-1381 or (512) 463-4600.</i>																								
Taxpayer name WINDMILL WELLNESS RANCH LLC																								
Mailing address 26229 N CRANES MILL RD					Secretary of State (SOS) file number or Comptroller file number 0802624500																			
City CANYON LAKE		State TX		ZIP Code 78133		Plus 4																		
<input checked="" type="checkbox"/> Blacken circle if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C. Principal office Principal place of business																								
<i>Please sign below!</i>																								
Officer, director and manager information is reported as of the date a Public Information Report is completed. The information is updated annually as part of the franchise tax report. There is no requirement or procedure for supplementing the information as officers, directors, or managers change throughout the year.																								
 3206256229622																								
SECTION A Name, title and mailing address of each officer, director or manager.																								
Name JULIA CLINE-SELLERS		Title DIRECTOR		Director <input checked="" type="radio"/> YES		Term expiration <table border="1" style="display: inline-table; width: 100px; height: 20px;"></table>		<table border="1" style="display: inline-table; width: 100px; height: 20px;"></table>																
Mailing address 1267 KINGS POINT DR		City CANYON LAKE		State TX		ZIP Code 78133																		
Name SHANNON MALISH		Title DIRECTOR		Director <input checked="" type="radio"/> YES		Term expiration <table border="1" style="display: inline-table; width: 100px; height: 20px;"></table>		<table border="1" style="display: inline-table; width: 100px; height: 20px;"></table>																
Mailing address 110 CLEAR POND		City SPRING BRANCH		State TX		ZIP Code 78070																		
Name SHANNON MALISH		Title PRESIDENT		Director <input type="radio"/> YES		Term expiration <table border="1" style="display: inline-table; width: 100px; height: 20px;"></table>		<table border="1" style="display: inline-table; width: 100px; height: 20px;"></table>																
Mailing address 110 CLEAR POND		City SPRING BRANCH		State TX		ZIP Code 78070																		

5. Below is a true and correct copy of the Texas Franchise Tax Public Information Report for Brain Frequency LLC for the reporting year 2023, dated May 12, 2023. identifying as Members Shannon Malish and Julia Cline:

Texas Franchise Tax Public Information Report

To be filed by Corporations, Limited Liability Companies (LLC) and Financial Institutions
This report MUST be signed and filed to satisfy franchise tax requirements

■ Comptroller of Public Accounts FORM 05-102 (Rev. 9-11/30)

■ Tcode 13196 Franchise

■ Taxpayer number	■ Report year	You have certain rights under Chapter 552 and 559, Government Code, to review, request, and correct information we have on file about you. Contact us at (800) 252-1381 or (512) 463-4600.		
3 2 0 7 4 2 4 1 1 5 2	2 0 2 3			
Taxpayer name BRAIN FREQUENCY LLC		Secretary of State (SOS) file number or Comptroller file number 0803617643		
Mailing address 26229 N CRANES MILL RD # FH		City CANYON LAKE	State TX	ZIP Code 78133 Plus 4
<input checked="" type="checkbox"/> Blacken circle if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C. <input type="checkbox"/> Principal office <input type="checkbox"/> Principal place of business				
<i>Please sign below!</i> Officer, director and manager information is reported as of the date a Public Information Report is completed. The information is updated annually as part of the franchise tax report. There is no requirement or procedure for supplementing the information as officers, directors, or managers change throughout the year.				
3207424115223				
SECTION A Name, title and mailing address of each officer, director or manager.				
Name JULIA CLINE	Title MEMBER	Director <input type="radio"/> YES	Term expiration <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Mailing address 1267 KINGS POINT DR	City CANYON LAKE	State TX	ZIP Code 78133	
Name SHANNON MALISH	Title MEMBER	Director <input type="radio"/> YES	Term expiration <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Mailing address 113 CLEAR POND COURT	City SPRING BRANCH	State TX	ZIP Code 78133	
Name	Title	Director <input type="radio"/> YES	Term expiration <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Mailing address	City	State	ZIP Code	

6. The following is a true and correct portion of Windmill Wellness Ranch's website, from <https://windmillwellnessranch.com/> (last visited May 28, 2024), posting the results of an "independent study" by Trac9.com:



7. The following is a true and correct portion of Windmill Wellness Ranch's website, from <https://windmillwellnessranch.com/about/best-outcomes-in-the-nation> (last visited May 29, 2024), stating that it employs Trac9.com for tracking metrics:

To that end, we employ meticulous independent third party tracking of our success metrics with Trac9, and have consistently found the Windmill Wellness approach surpasses those of other treatment centers.

8. The following is a true and correct portion of Trac9's website, from <https://trac9.com/our-results/> (last visited May 31, 2024), stating that "GRS" Trac9's product "was created to provide a comprehensive benchmark in total improvement throughout the course of treatment":



9. The following is a true and correct portion of Trac9's website, from <https://trac9.com/podcast/> (last visited May 31, 2024), stating that "[i]mproving clinical outcomes is dependent on feedback-informed care models":

Improving clinical outcomes is dependent on feedback-informed care models. There is a tremendous opportunity in the treatment space to track, analyze, and improve based on data. In the following podcast features, Dr. Jared Dempsey, Chief Scientist at Trac9 Informatics, discusses how Trac9 has collected data on over 40,000 patients through over 125,000 assessments to identify key data points that help their clients improve outcomes.

10. The following is a true and correct portion of Trac9's website, from <https://trac9.com/podcast/> (last visited May 31, 2024), stating that a podcast featuring Dr. Dempsey was titled "Improved Outcomes Through Feedback-informed Clinical Care with Jared Dempsey"):



I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 31, 2024.

By: /s/ J. Rick Taché
J. Rick Taché